

CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement is entered into this 14 day of February, 2008, by and between People's City Mission Home, a Nebraska nonprofit corporation ("Owner"), and the City of Lincoln, a municipal corporation ("City").

RECITALS

- A. Owner is the owner in fee simple of Lots 1, 2, and 3 of Peoples City Mission Addition, Lincoln, Lancaster County, Nebraska ("Property") and has submitted proper petitions to the City to vacate North 1st Street from the north right-of-way line of "Q" Street to the north line of Line 57, I.T.
- B. As a condition to the approval of such street vacation, the City has required Owner to grant a permanent conservation easement for flood storage capacity within the vacated right-of-way or elsewhere on land of Owner.
- C. Owner desires to convey and City desires to accept a permanent Conservation Easement to preserve the flood storage capacity on that portion of Lot 3 of the Property legally described below:

A parcel of land located in Section 23, Township 10 North, Range 6 East of the Prime Meridian, Lincoln, Lancaster County, Nebraska. Commencing at the Northeast corner of Lot 3, Peoples City Mission Addition, thence South 00 Degrees 10 Minutes 04 Seconds West for a distance of 280.00 feet to the point of beginning; thence South 00 degrees 10 minutes 04 seconds west for a distance of 134 feet; thence North 89 degrees 53 minutes 09 seconds West for a distance of 299.62 feet; thence North 00 degrees 09 minutes 47 seconds East for a distance of 134.00 feet; thence South 89 degrees 53 minutes 09 seconds East for a distance of 299.64 feet to the point of beginning. Parcel 'A' contains 0.92 acres more or less ("Easement Area").

- D. City is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easement Act codified at Neb. Rev. Stat. §§76-2,111 through 76-2,118 (the "Act").
- E. This Agreement has been submitted to satisfy requirement 1.2 of the Planning Department's staff report recommending conditional approval that the vacation request not be scheduled on the City Council agenda until the Owner signs a conservation easement acceptable to the City.
- F. The City Council of the City of Lincoln, Nebraska, has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln-Lancaster County Planning Commission and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW THEREFORE, in consideration of the mutual value to the Owner and City and to encourage and preserve wetlands, City and Owner agree as follows:

1. **Grant of Conservation Easement.** Owner hereby creates, establishes, grants, and conveys to City for its benefit, and the benefit of the public, a conservation easement over the Easement Area to restrict the Easement Area to open space (which may include a surface parking area) and protect and preserve the flood storage capacity of the Easement Area and to restrict development and future use of the Property that will significantly impair or interfere with the flood storage capacity of the Easement Area.

- A. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:
 - i. Construction or placement of fill material, cement, buildings, fences, signs, or any other structure;
 - ii. Any other use or practice that would adversely impact the flood storage capacity.
- B. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:
 - i. By the city pursuant to the provisions of Neb. Rev. Stat. §76-2,113.
 - ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. §76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

2. **Condition of the Easement Area at Time of Grant.** The condition of the Easement Area at the time of this grant shall mean the flood storage capacity of the

Easement Area existing at the time of this grant as shown on the attached Exhibit "A" and conforming to the conservation easement site plan with Street and Alley Vacation 07009 in the City.

3. **Protection and Maintenance of the Easement Area.**

- A. Owner agrees at Owner's own cost and expense to protect and maintain the flood storage capacity of the Easement Area in the same condition existing at the time of this grant except as otherwise authorized by this Conservation Easement.
- B. Owner agrees to pay any real estate taxes, estate taxes, or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Owner further agrees to obtain, pay for, and continuously maintain liability and property insurance covering the Easement Area.
- C. Owner shall cooperate with and assist City at City's cost in applying for, obtaining, protecting, maintaining, and enhancing any and all surface water and groundwater rights and privileges related to the Easement Area by signing applications which City deems necessary or desirable for the management, maintenance, or development of the Easement Area for the purposes provided for herein.

4. **Inspections and Access by City.** City shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles, and equipment for the purpose of inspecting, maintaining, or protecting the flood storage capacity of the Easement Area as the City may deem necessary or desirable.

5. **Enforcement.** Owner agrees that City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to the right to require restoration of the Easement Area to the condition at the time of this grant. Owner further agrees that City may seek an injunction restraining any person from violating the terms of this Conservation Easement and that City may be granted such injunction without posting of any bond whatsoever. Owner further agrees that City does not waive or forfeit the right to take any action as it deems necessary to ensure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should Owner undertake any activity requiring the approval of City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement, that City shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and City's cost of suit, including reasonable attorney fees, shall be paid by Owner.

6. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area and has legal right, title, and capacity to

grant the conservation Easement granted herein subject to easement and restrictions of record.

7. **Binding Effect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors, and assigns of Owner and City.

8. **Recordation.** The parties agree that this Agreement shall be duly filed by City with the Lancaster County Register of Deeds upon execution and acceptance by City. Filing fees shall be paid in advance by Owner.

9. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provision to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

"OWNER"

PEOPLE'S CITY MISSION HOME,
a Nebraska nonprofit corporation

By:

Thomas Barber, Executive Director

"CITY"

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

Attest:

Joan Ross, City Clerk

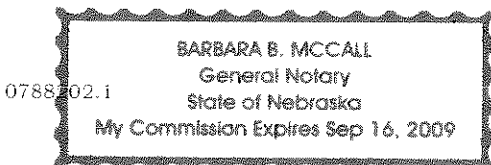
By:

Christopher Beutler, Mayor

STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 14 day of Febr., 2008, by Thomas Barber, Executive Director of People's City Mission Home, a Nebraska nonprofit corporation.

Barbara B. McCall
Notary Public



STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Christopher Beutler, Mayor, and Joan Ross, City Clerk of the City of Lincoln, Nebraska.

Notary Public

